



New federal overtime rules - 2004

How they apply to Washington State

Aug. 18, 2004

New federal rules are scheduled to take effect on Aug. 23, 2004, that change the circumstances in which white-collar workers can be exempted from receiving overtime pay. The U.S. Department of Labor (USDOL) has estimated that about 1.3 million workers nationwide will be affected by these changes, with the greatest effect felt in the service and retail industries. Washington is one of many states with separate laws and rules for overtime pay. The state Department of Labor and Industries (L&I) is providing general information in this fact sheet to help employers and workers determine whether new federal overtime rules or state rules apply to their specific circumstances.

To be sure of how the new federal rules apply to your firm or individual job, please consult with the USDOL, because final decisions about whether particular positions will be exempt under the new federal overtime rules will be determined by that agency. Please contact L&I for questions about state rules.

Sources for useful information

- **Interpretation of the new federal overtime rules:** The federal government has fact sheets addressing frequent questions about the new rule. You can find them at www.dol.gov/fairpay, or contact USDOL toll free at 1-866-487-9243 for detailed information.
- **Interpretation of state overtime rules/whether state rule is most stringent:**
If you have more detailed questions, you are welcome to:
 - Find information about state labor regulations, plus the texts of laws and regulations, on the Internet at Wages.LNI.wa.gov.
 - Send e-mail to L&I's Employment Standards section in Tumwater at conw235@lni.wa.gov or call 360-902-5316.

Helpful tips about overtime rules

- *Employers must comply with both state and federal overtime rules. Where differences exist between Washington State and new federal overtime rules, an employer must follow the rule that is most favorable to the worker.*
- Please remember that state overtime rules have not changed, so any change you need to make will result from changes in the federal rules.
- Washington State overtime rules generally follow the old federal overtime rules. Because the federal rules changed, there will now be some cases in which the federal rules are more favorable to workers, and some in which the state rules are more favorable.
- Overtime exemptions are determined on a case-by-case basis, so it is important to review the details about your particular circumstances and compare them against the new federal rules. Please check with L&I, USDOL or a qualified consultant to determine how your specific circumstances are affected.
- The federal rule changes, and existing state regulations, affect *white-collar employees only*. Workers *not* affected by these overtime-exemption rules include blue-collar workers who perform manual labor, construction trades, production workers, probation and parole officers, and park rangers. The new rules also do not apply to first responders such as police, firefighters, paramedics, EMTs, ambulance personnel, rescue workers, and HAZMAT workers. These workers must actually perform the physical duties required, such as fighting fires, solving crimes, helping crime or accident victims, etc.

Notable differences: State vs. new federal overtime rules

- **Minimum salary requirement:**
 - Washington's minimum salary for overtime-exempt workers is \$250 per week.
 - The new federal rules raise the federal minimum. It previously was as little as \$155 per week, but now is \$455 per week.
- **Highly Compensated Employees:** Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from overtime pay under the new federal rule if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard federal tests for exemption. You can find more information on the Internet at www.dol.gov/esa/regs/compliance/whd/fairpay/fs17a_overview.htm. Washington State overtime rules, which parallel the previous federal rules, do not have this provision.
- **Outside sales employees:** Under the new federal rules, an outside sales employee who is exempt from overtime is defined as one who:
 - Customarily and regularly is engaged away from his/her employer's place or places of business;
 - Has a primary duty of making sales or obtaining orders or contracts for services or the use of facilities, for which the client or customer will pay a consideration.

Washington State rules define an exempt outside sales employee as one who:

- 1) Is customarily and regularly engaged away from his/her employer's place or places of business;
 - 2) Is engaged in making sales, obtaining orders or contracts for services or use of facilities or demonstrating products or equipment for sale;
 - 3) Is paid a guaranteed salary, commission, or fee payment (or combination);
 - 4) Controls his/her total hours worked each week;
 - 5) Spends no more than 20 percent of his/her time doing inside office work not related to outside sales.
- **Deductions for violation of workplace policies:** In addition to overtime eligibility changes, the new federal rule also affects deductions from salary that an employer can impose upon a worker who violates organizational policies on workplace safety:
 - The new federal rule allows an employer to impose *unpaid* disciplinary suspensions of *one or more full days* for workplace-conduct rule infractions.
 - Washington State allows an *unpaid* disciplinary suspension in increments of less than one week *only* for violations of safety rules of major significance. Unpaid disciplinary suspensions for non-major safety violations cannot be in less than full-week increments.

Visit the L&I web site at www.LNI.wa.gov

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